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THE FREEDOM OF INFORMATION ACT AND TH
INTELLIGENCE AGENCIES

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Abstract—The author challenges the claims of intelligence agency officials fo
empting their agencies' files from the FOIA. Noting that the FOIA's mand
search and disclosure provision alone permits access to the range of intelli
agency files, the author cites the separate filing and "compartmentalized" re
policies of the CIA and the FBI. He concludes by challenging the adequacy of
gressional oversight without independent historical research.

Since 1979, one of the principal legislative objectives of the Federal Bure
tion (FBI) and of the Central Intelligence Agency (CIA) has been to exempt their files from the mandatory search and disclosure provisions of the Freedom of Information Act (FOIA) of 1966, as amended [1]. These agencies' claims to the contrary, there is no record to date that legitimate national secrets have been compromised because of the FOIA. This is not surprising since the Act already contains a "national security" exception which exempts properly classified FBI and CIA files from public disclosure. The FBI's and the CIA's proposed FOIA exemptive measures, however, would effectively preempt scholarly research into the past history of the FBI and the CIA at a time when such research can only now be initiated.

Until the mid-1970s, because CIA and FBI files were absolutely classified, scholarly research into the history of these agencies was virtually impossible. Unlike journalists, historians and political scientists need to have access to primary source materials—interviews, press conferences, public testimony, and selectively leaked documents clearly do not meet the exacting standards of scholarly research. Yet, for example, all FBI files dating from the World War I period were classified, including those documenting the FBI's August 1923 investigation of the fraudulent Zinoviev Instructions. In addition, in the early 1960s, FBI officials successfully pressured the National Archives to withdraw from Department of Justice and American Protective League files deposited at the Archives all documents and copies of documents pertaining to FBI investigations of the World War I period [2].

The problem is not simply over- and indiscriminate-classification. Were that the case, then these proposed amendments to the FOIA would not cripple historical research. Under Executive Order 12065 (and formerly E.O. 11652), historians can submit mandatory review requests to obtain declassification of improperly and no longer justifiably classified documents. Yet, to employ the mandatory review procedure, the researcher must be able to identify specific classified documents and be generally aware of particular programs and activities. As a result of the Senate Select Committee on Intelligence Activities' hearings and reports, however, we now know how limited, even irrelevant, had been our knowledge of past FBI and CIA activities. Experts of the Cold War years might have been aware generally of the preventive detention program instituted under the McCarran (Internal Security) Act of 1950 and lasting until congressional repeal in September 1971. We now know that, without